

(2) *specialized training of local law enforcement and court personnel to identify and manage offenders or suspects who may be members of the priority population; and*

(3) *other model programs for offenders and suspects who may be members of the priority population, including crisis intervention training for law enforcement personnel.*

(b) *A local mental health or mental retardation authority developing a system, training, or a model program under Subsection (a) shall collaborate with other local resources, including local law enforcement and judicial systems and local personnel.*

(c) *A local mental health or mental retardation authority may not implement a system, training, or a model program developed under this section until the system, training, or program is approved by the department.*

SECTION 4. This Act takes effect September 1, 2003.

Passed the Senate on April 16, 2003: Yeas 31, Nays 0; passed the House on May 16, 2003, by a non-record vote.

Approved June 20, 2003.

Effective September 1, 2003.

CHAPTER 1215

S.B. No. 1147

AN ACT

relating to the functions of the State Office of Administrative Hearings, including hearings functions transferred to the office from the Texas Department of Licensing and Regulation.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Subchapter C, Chapter 552, Government Code, is amended by adding Section 552.141 to read as follows:

Sec. 552.141. EXCEPTION: WORKING PAPERS OF ADMINISTRATIVE LAW JUDGES AT STATE OFFICE OF ADMINISTRATIVE HEARINGS. The following working papers of an administrative law judge at the State Office of Administrative Hearings are excepted from the requirements of Section 552.021:

(1) *notes recording the observations, thoughts, or impressions of an administrative law judge;*

(2) *drafts of a proposal for decision;*

(3) *drafts of orders made in connection with conducting contested case hearings; and*

(4) *drafts of orders made in connection with conducting alternative dispute resolution procedures.*

SECTION 2. Section 2003.021, Government Code, is amended by adding Subsection (g) to read as follows:

(g) *The office shall conduct all hearings in contested cases under Chapter 2001 that are before the Texas Department of Licensing and Regulation under Chapter 51, Occupations Code.*

SECTION 3. Section 2003.022, Government Code, is amended by adding Subsection (e) to read as follows:

(e) *The appointment of the chief administrative law judge shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointee.*

SECTION 4. Subchapter B, Chapter 2003, Government Code, is amended by adding Section 2003.0221 to read as follows:

Sec. 2003.0221. REMOVAL OF CHIEF ADMINISTRATIVE LAW JUDGE. It is a ground for removal from the position of chief administrative law judge that an appointee:

(1) does not have at the time of taking office the qualifications required by Section 2003.022(b);

(2) does not maintain during service as chief administrative law judge a license to practice law in this state;

(3) is ineligible to hold the position under Section 2003.0225;

(4) cannot, because of illness or disability, discharge the appointee's duties for a substantial part of the appointee's term; or

(5) engages in the practice of law in violation of Section 2003.022(c).

SECTION 5. Subchapter B, Chapter 2003, Government Code, is amended by adding Sections 2003.0225 and 2003.0226 to read as follows:

Sec. 2003.0225. CONFLICT OF INTEREST. (a) In this section, "Texas trade association" means a cooperative and voluntarily joined statewide association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person may not hold the position of chief administrative law judge and may not be employed by the office in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.), and its subsequent amendments, if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in any field regulated by an agency for which the office is required to conduct administrative hearings; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in any field regulated by an agency for which the office is required to conduct administrative hearings.

(c) A person may not hold the position of chief administrative law judge or act as the general counsel to the chief administrative law judge or the office if the person is required to register as a lobbyist under Chapter 305 because of the person's activities for compensation on behalf of a profession related to the operation of the office, including a profession that is licensed by an agency for which the office is required to conduct administrative hearings.

Sec. 2003.0226. INFORMATION REGARDING REQUIREMENTS FOR EMPLOYMENT AND STANDARDS OF CONDUCT. The chief administrative law judge or the chief administrative law judge's designee shall provide to office employees, as often as necessary, information regarding the requirements for employment under this chapter, including information regarding a person's responsibilities under applicable laws relating to standards of conduct for state employees.

SECTION 6. Section 2003.023, Government Code, is amended to read as follows:

Sec. 2003.023. SUNSET PROVISION. The State Office of Administrative Hearings is subject to review under Chapter 325 (Texas Sunset Act), but is not abolished under that chapter. The office shall be reviewed during the periods in which state agencies abolished in 2015 [2003] and every 12th year after 2015 [2003] are reviewed.

SECTION 7. Section 2003.024, Government Code, is amended to read as follows:

Sec. 2003.024. INTERAGENCY CONTRACTS; ANTICIPATED HOURLY USAGE AND COST ESTIMATES. (a) If a state agency referred matters to the office during any of the three most recent state fiscal years for which complete information about the agency's hourly usage is available and the costs to the office of conducting hearings and alternative dispute resolution procedures for the [a] state agency [~~that refers matters to the office~~] are not to be [~~otherwise~~] paid by appropriations to the office during a state fiscal biennium, the office and the agency shall enter into an interagency contract for the biennium under which the referring agency pays the office, at the start of each fiscal year of the biennium, a lump-sum amount to cover the costs of conducting all hearings and procedures during the fiscal year [~~a hearing or procedure~~]. The lump-sum amount [~~costs~~] paid to the office under the contract must be based on:

(1) an hourly rate that is set by the office~~[- The office shall set the hourly rate for a biennium]~~ in time for the rate to be reviewed by the legislature as part of the legislature's review of the office's legislative appropriations request for the biennium; and

(2) the anticipated hourly usage of the office's services by the referring agency for each fiscal year of the biennium, as estimated by the office under Subsection (a-1).

(a-1) Before the beginning of each state fiscal biennium, the office shall estimate for each fiscal year of the biennium the anticipated hourly usage for each state agency that referred matters to the office during any of the three most recent state fiscal years for which complete information about the agency's hourly usage is available. The office shall estimate an agency's anticipated hourly usage by evaluating:

(1) the number of hours spent by the office conducting hearings or alternative dispute resolution procedures for the state agency during the three most recent state fiscal years for which complete information about the agency's hourly usage is available; and

(2) any other relevant information, including information provided to the office by the state agency, that suggests an anticipated increase or decrease in the agency's hourly usage of the office's services during the state fiscal biennium, as compared to past usage.

(a-2) If a state agency did not refer matters to the office during any of the three state fiscal years preceding a state fiscal biennium for which complete information about the agency's hourly usage would have been available and did not provide information to the office sufficient for the office to reasonably and timely estimate anticipated usage and enter into a contract with the agency before the start of the state fiscal biennium, and the costs to the office of conducting hearings and alternative dispute resolution procedures for the state agency are not paid by appropriations to the office for the state fiscal biennium, the referring agency shall pay the office the costs of conducting hearings or procedures for the agency based on the hourly rate that is set by the office under Subsection (a) and on the agency's actual usage of the office's services.

(b) If the costs to the office of conducting hearings and alternative dispute resolution procedures for a state agency that refers matters to the office are *anticipated to be* ~~[otherwise]~~ paid by a lump-sum appropriation ~~[appropriations]~~ to the office for ~~[during]~~ a state fiscal biennium, the office shall timely provide to the legislature the information described by Subsection (c) ~~[office and the agency shall enter into an interagency contract for each state fiscal year during the biennium under which the referring agency pays the office the costs for the number of hours spent by the office conducting hearings or alternative dispute resolution procedures for the agency during the fiscal year that exceeds by 10 percent or more the number of hours spent by the office conducting hearings or alternative dispute resolution procedures for the agency during the state fiscal year that ended August 31, 1998. The costs paid under the contract must be based on an hourly rate that is set by the office. The office shall set the hourly rate for a biennium in time for the rate to be reviewed by the legislature as part of the legislature's review of the office's legislative appropriations request for the biennium].~~

(c) Each state fiscal biennium, the office as part of its legislative appropriation request shall file:

(1) information, as estimated under Subsection (a-1), related to the anticipated hourly usage of each state agency that refers matters to the office for which the costs of hearings and alternative dispute resolution procedures are anticipated to be paid by appropriations to the office; and

(2) an estimate of its hourly costs in conducting each type of hearing or dispute resolution procedure. The office shall estimate the hourly cost based on the average cost per hour during the preceding state fiscal year of:

(A) ~~[(1)]~~ the salaries of its administrative law judges;

(B) ~~[(2)]~~ the travel expenses, hearing costs, and telephone charges directly related to the conduct of a hearing or procedure; and

(C) ~~[(3)]~~ the administrative costs of the office, including docketing costs and the administrative costs of the division of the office that conducts the hearing or procedure.

(d) This section does not apply to hearings conducted:

- (1) by the natural resource conservation division or the utility division; or
- (2) under the administrative license revocation program.

SECTION 8. Section 2003.050, Government Code, is amended by adding Subsection (c) to read as follows:

(c) The rules of the office regarding the participation of a witness by telephone must include procedures to verify the identity of the witness who is to appear by telephone.

SECTION 9. Subchapter C, Chapter 2003, Government Code, is amended by adding Sections 2003.052, 2003.053, 2003.054, 2003.055, and 2003.056 to read as follows:

Sec. 2003.052. HANDLING OF COMPLAINTS. (a) The office shall maintain a file on each written complaint filed with the office. The file must include:

- (1) the name of the person who filed the complaint;*
- (2) the date the complaint is received by the office;*
- (3) the subject matter of the complaint;*
- (4) the name of each person contacted in relation to the complaint;*
- (5) a summary of the results of the review or investigation of the complaint; and*
- (6) an explanation of the reason the file was closed, if the office closed the file without taking action other than to investigate the complaint.*

(b) The office shall provide to the person filing the complaint and to each person who is a subject of the complaint a copy of the office's policies and procedures relating to complaint investigation and resolution.

(c) The office, at least quarterly until final disposition of the complaint, shall notify the person filing the complaint and each person who is a subject of the complaint of the status of the investigation unless the notice would jeopardize an undercover investigation.

Sec. 2003.053. EQUAL EMPLOYMENT OPPORTUNITY POLICY. (a) The chief administrative law judge or the chief administrative law judge's designee shall prepare and maintain a written policy statement that implements a program of equal employment opportunity to ensure that all personnel decisions are made without regard to race, color, disability, sex, religion, age, or national origin.

(b) The policy statement must include:

- (1) personnel policies, including policies relating to recruitment, evaluation, selection, training, and promotion of personnel, that show the intent of the office to avoid the unlawful employment practices described by Chapter 21, Labor Code; and*
- (2) an analysis of the extent to which the composition of the office's personnel is in accordance with state and federal law and a description of reasonable methods to achieve compliance with state and federal law.*

(c) The policy statement must:

- (1) be updated annually;*
- (2) be reviewed by the state Commission on Human Rights for compliance with Subsection (b)(1); and*
- (3) be filed with the governor's office.*

Sec. 2003.054. STATE EMPLOYEE INCENTIVE PROGRAM. The chief administrative law judge or the chief administrative law judge's designee shall provide to office employees information and training on the benefits and methods of participation in the state employee incentive program.

Sec. 2003.055. EFFECTIVE USE OF TECHNOLOGY. The chief administrative law judge shall develop and implement a policy requiring the chief administrative law judge and office employees to research and propose appropriate technological solutions to improve the office's ability to perform its functions. The technological solutions must:

- (1) ensure that the public is able to easily find information about the office on the Internet;*
- (2) ensure that persons who want to use the office's services are able to:*

- (A) *interact with the office through the Internet; and*
- (B) *access any service that can be provided effectively through the Internet; and*
- (3) *be cost-effective and developed through the office's planning processes.*

Sec. 2003.056. *ALTERNATIVE DISPUTE RESOLUTION POLICY. The chief administrative law judge shall develop and implement a policy to encourage the use of alternative dispute resolution procedures where appropriate to assist in the internal and external resolution of disputes within the office's jurisdiction.*

SECTION 10. Subchapter C, Chapter 2003, Government Code, is amended by adding Section 2003.057 to read as follows:

Sec. 2003.057. *HEARING TRANSLATOR. If a translator is requested for all or part of a hearing conducted by the office, the office shall provide an appropriate translator for that purpose.*

SECTION 11. Section 51.305, Occupations Code, is amended to read as follows:

Sec. 51.305. *HEARING ON RECOMMENDATIONS. (a) If the respondent requests a hearing, the hearing shall be conducted by the State Office of Administrative Hearings [department shall set a hearing and give written notice of the hearing to the respondent].*

(b) The State Office of Administrative Hearings shall consider the department's applicable substantive rules and policies when conducting a hearing under this subchapter [The executive director may employ a hearings officer to conduct the hearing].

(c) An administrative law judge at the State Office of Administrative Hearings [The hearings officer] shall:

- (1) make findings of fact and conclusions of law; and*
- (2) promptly issue to the commission a proposal for decision as to the occurrence of the violation and the amount of any proposed administrative penalty.*

SECTION 12. Subsection (a), Section 51.354, Occupations Code, is amended to read as follows:

(a) A respondent is entitled to a hearing conducted by the State Office of Administrative Hearings if the executive director proposes to deny, suspend, or revoke a license.

SECTION 13. Section 1802.203, Occupations Code, is amended to read as follows:

Sec. 1802.203. *HEARING. [(a)] If the amount determined by the department under Section 1802.202 is disputed by the auctioneer or the aggrieved party, the department shall refer the matter to the State Office of Administrative Hearings for a hearing on the disputed claim [department's hearings examiner shall:*

- [(1) conduct a hearing on the claim in accordance with department rules; and*
- [(2) determine the amount owed to the aggrieved party].*

[(b) A hearing on a claim may be conducted at the department's Austin office or at another location as provided by department rule.

[(c) After the hearing, the hearings examiner shall prepare a proposal for decision for the commissioner.]

SECTION 14. The heading to Section 1802.253, Occupations Code, is amended to read as follows:

Sec. 1802.253. *HEARING BY STATE OFFICE OF ADMINISTRATIVE HEARINGS.*

SECTION 15. Subsection (a), Section 1802.253, Occupations Code, is amended to read as follows:

(a) Before denying an application for a license or suspending or revoking a license, the commissioner shall:

- (1) set the matter for a hearing to be conducted by the State Office of Administrative Hearings; and*
- (2) before the 30th day before the hearing date, notify the applicant or license holder in writing of:*

- (A) the charges alleged or the question to be determined at the hearing; and*

(B) the date and location of the hearing.

SECTION 16. Subsections (b) and (c), Section 51.354, Occupations Code, are repealed.

SECTION 17. On September 1, 2003:

(1) all functions and activities performed by the Texas Department of Licensing and Regulation that relate to conducting administrative hearings at the department are transferred to the State Office of Administrative Hearings;

(2) two full-time equivalent employee positions are transferred from the Texas Department of Licensing and Regulation to the State Office of Administrative Hearings to provide the hearing services described in Sections 51.305, 51.354, 1802.203, and 1802.253, Occupations Code, as amended by this Act. When filling the two full-time equivalent employee positions, the State Office of Administrative Hearings shall give first consideration to an applicant employed as a hearings examiner or administrative technician at the Texas Department of Licensing and Regulation;

(3) all property, including records, in the custody of the Texas Department of Licensing and Regulation related to providing administrative hearings under the former Sections 51.305, 51.354, 1802.203, and 1802.253, Occupations Code, becomes the property of the State Office of Administrative Hearings, but stays in the same physical location unless moved in accordance with the plan created under Section 17 of this Act; and

(4) all funds appropriated by the legislature to the Texas Department of Licensing and Regulation for purposes relating to conducting administrative hearings under the former Sections 51.305, 51.354, 1802.203, and 1802.253, Occupations Code, are transferred to the State Office of Administrative Hearings.

SECTION 18. The Texas Department of Licensing and Regulation and the State Office of Administrative Hearings shall establish a transition plan for the transfer described in Section 16 of this Act. The plan must include:

(1) a timetable for any necessary or advisable movement of the physical location of property;

(2) an inventory of records and other property required to be transferred; and

(3) a plan for continued support and cooperation the Texas Department of Licensing and Regulation must provide the State Office of Administrative Hearings to ensure an efficient transfer of services and planning for future needs, including:

(A) an informational training session conducted by the Texas Department of Licensing and Regulation for hearings officers at the State Office of Administrative Hearings; and

(B) procedures for forwarding requests for administrative hearings submitted to the Texas Department of Licensing and Regulation to the State Office of Administrative Hearings.

SECTION 19. (a) This Act takes effect September 1, 2003.

(b) The change in law made by this Act to Section 2003.024, Government Code, applies only in relation to the state fiscal biennium beginning September 1, 2005, and any subsequent state fiscal biennium.

Passed the Senate on April 16, 2003: Yeas 31, Nays 0; the Senate concurred in House amendment on May 24, 2003, by a viva-voce vote; passed the House, with amendment, on May 20, 2003, by a non-record vote.

Approved June 20, 2003.

Effective September 1, 2003.

CHAPTER 1216

S.B. No. 1152

AN ACT

relating to the provision of Internet services, including the use of TexasOnline and the establishment of an education Internet portal.